FILE COPY

IN THE

Supreme Court of the United States

October Term, 1935

IN EQUITY.

No. 10, Original.

THE STATE OF WYOMING, *Complainant,*

vs.

THE STATE OF COLORADO, *Defendant.*

RETURN OF THE DEFENDANT THE STATE OF COLORADO TO THE RULE TO SHOW CAUSE.

BYRON G. ROGERS,
Attorney General,
HENRY E. LUTZ,
Deputy Attorney General,
SHRADER P. HOWELL,
Assistant Attorney General,
Attorneys for the Defendant State of Colorado.

ROBERT G. SMITH,
LAWRENCE R. TEMPLE,
ALBERT P. FISCHER,
Of Counsel.

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RETURN OF THE DEFENDANT THE STATE OF COLORADO TO THE RULE TO SHOW CAUSE.

Comes now the State of Colorado, Defendant above named, by Byron G. Rogers, its Attorney General, and in obedience to the RULE TO SHOW CAUSE heretofore herein issued as of date, March 4th, A. D. 1940, makes this its Return thereunto, and in this behalf respectfully states and shows:

I.

(1) That it admits all and singular the allegations of paragraphs numbered "First," "Second," "Third" and "Fourth" of the Petition herein.

(2) Defendant joins in the prayer found in Paragraph "Fourth" of said Petition.

(3) Defendant generally admits the allegations of Paragraph "Fifth," but respecting the alleged excessive appropriations of the so-called Meadowland appropriators, alleges and says that said appropriators purported to act under and by virtue of the authority of a decree of the District Court of Larimer County, Colorado, entered as of date February 2nd, A. D. 1939, wherein and whereby it was found and decreed that ninety per cent of said quantity of water so diverted was in truth and in fact returned to said Laramie River without prejudice to the Plaintiff or anyone else whomsoever. Copy of said mentioned decree, hereinafter more particularly referred to, is hereto attached, made a part hereof, and marked Exhibit "A."

(4) Defendant admits all and singular the allegations of Paragraph "Sixth" and further states that as soon as Defendant's state engineer and its other responsible officials for the administration of all water decrees, determined that all of the diversions and appropriations authorized and permitted by this Honorable Court had been made, they ordered closed all affected headgates, which order was immediately carried into effect.

(5) Defendant admits the allegations of Paragraph "Seventh," save that it denies that it permitted or allowed, or intended to permit or allow, any diversion soever in disregard or violation of the decree of this Honorable Court. However, after this Defendant had posted said mentioned notices and said headgates had been closed as aforesaid, some person or persons whose identity was and as yet is to this Defendant unknown, without the knowledge, consent or approval of this Defendant, caused said headgates to be reopened and some of said notices to be removed whereby a greater quantity than that specifically mentioned in the decree of this Honorable Court was diverted from said Laramie River.

(6) Defendant admits the allegations of Paragraph "Eighth" of the Petition.

(7) Defendant denies the allegations of Paragraph "Ninth" save that it admits an excessive diversion from the standpoint of strict water admeasurement, by certain of its Meadowland appropriators and claimants, during the period in said paragraph alleged, but with respect thereto further avers that said diversions by said Meadowland appropriators in excess of 4,250 acre feet headgate measurement were made pursuant to a decree of the District Court of Colorado (hereinafter more particularly referred to) wherein said Court undertook to interpret and construe the decree of this Honorable Court as having made a mass allocation of 39,750 acre feet of water annually to Colorado claimants as distinguished from individual allotments in specified amounts, the said District Court decree authorized the diversion by said Meadowland appropriators complained of in said Paragraph "Ninth" as and according to their priorities established under Colorado law, all diversions not to exceed 39,750 acre feet.

And further as this Defendant is informed and believes Complainant herein, the State of Wyoming, by and through its responsible officers did expressly consent to said Meadowland diversions of which it now complains, such consent having been given on the basis and in the belief that at least 75 per cent of said diversions to said Meadowlands did in truth and in fact return to the Laramie River and hence wholly failed to impair any rights of Wyoming or its appropriators. This Defendant further alleges Complainant was and is in accord with the said decree of the said Colorado District Court respecting its interpretation of the decree of this Court and was and is of the opinion that the apparent restriction of said Meadowlands to 4,250 acre feet annually was not a literal restriction but was only a part of a mass allocation to Colorado of 39,750 acre feet annually.

(8) Defendant denies all and singular the allegations of Paragraph "Tenth" of said Petition, and in such behalf states that by reason of the so-called return flow to said Laramie River, as herein above noted, and conceded by said

Complainant to be true, that no damage has resulted or can result to said Complainant or to any of its appropriators.

(9) With respect to the allegations of Paragraph "Eleventh," this Defendant avers that, although it admits that notice therein was given, nevertheless said Complainant did not insist upon a forthwith closing of the headgates particularly as respects the said Meadowland diversions, for the reason that it then and there conceded that such was the return flow therefrom that no damage or injury could or would ensue to said Complainant.

(10) Defendant admits so much of the allegations of Paragraph "Twelfth" as relate to excessive diversions determined by acre feet admeasurements by its Meadowland claimants, but expressly denies its own responsibility therefor or its participation therein, and denies that it refused to again close said headgates, but upon the contrary, thereupon again proceeded to close said headgates as more particularly next hereinafter alleged.

(11) Defendant admits the allegations of Paragraph "Thirteenth" and alleges that no Colorado appropriation exceeded or even equaled the amount accredited to it as a distinct appropriation with the exception of the Meadowland appropriaters who assert and claim that they were assured by the legally constituted authorities of Wyoming that Complainant had no objection as to excess diversions by them, by reason of the so-called return flow thereof to the Laramie River, but that nevertheless and in response to the demand as in Paragraph "Thirteenth" alleged, this Defendant did on, to-wit, July 13th and July 14th, A. D. 1939, by and through its State Engineer and for the second time again proceed to close and did close the headgates in this cause involved and immediately thereafter said Claimants, or some of them, or some person or persons in their behalf, again reopened said headgates as was done in the first instance, all of which this Defendant had not anticipated and was then and there immediately without adequate policing facilities to prevent.

(12) This Defendant denies all of Paragraph "Fifteenth" save that portion thereof stating that all of the diversions herein involved are within the State of Colorado and that Complainant is without jurisdiction in regard thereto.

II.

(1) And for further Return to the Rule, this Defendant expressly alleges that neither it nor any of its agents has knowingly, wilfully, or intentionally, or at all, violated the decree of this Honorable Court heretofore herein entered, and earnestly disclaims any contumacy so ever; further that any excessive diversions by its claimants were without its knowledge in the first instance or consent or approval thereof thereafter, and this Defendant assures this Honorable Court that it is not only eager itself to strictly abide but to cause all of its water claimants to strictly abide the decree of this Court, and will cause them so to do.

(2) For the further information and consideration of this Honorable Court, it is respectfully advised, that heretofore and on or about the 24th day of September, A. D. 1938, there was instituted in the District Court of the County of Larimer in the State of Colorado that certain cause numbered 7897 in the dockets thereof and entitled as follows:

Adelrick Benzinger,

Plaintiff,

vs.

The Water Supply & Storage Company, a corporation, The Tunnel Water Company, a corporation, The Divide Canal & Reservoir Company, a corporation, M. C. Hinderlider as State Engineer of the State of Colorado, and R. A. Mosier, as Commissioner of Water District No. 48,

Defendants.

Wherein and whereby the Plaintiff in said suit sought an injunction against the several Defendants therein named upon the grounds therein stated and for a declaratory judgment respecting the several rights of the parties. That said suit to a very considerable extent involved the construction and interpretation of the decree of this Honorable Court and the proceedings herein.

It was further alleged in said suit that the Defendants therein and each of them interpreted the decree of this Honorable Court as having made specific allotments to said defendant corporations, and that said interpretation was at contrariety with and interfered with specific appropriations long prior thereto made in conformity with apt laws of the State of Colorado.

After trial and hearing had of said cause, the said Court did on the 21st day of February, 1939, enter its decree and declaratory judgment, a true copy whereof is hereto attached and marked as hereinbefore alleged as Exhibit "A."

It will be noted therefrom that the said District Court of the State of Colorado specifically found that approximately ninety per cent of the water applied to the irrigation of the said Meadowlands returned to the Laramie River through percolation and surface flow and that in consequence only approximately ten per cent of all the water diverted for said Meadowland appropriations was actually consumed thereby.

The attention of the Court is called particularly to Paragraph VII of said decree of said District Court of Colorado wherein it is stated and found that the opinion and decree of this, the Supreme Court of the United States, has created uncertainties and given rise to controversies between many of the Colorado appropriators: that the decree of this Court if it made specific allocations of water therein runs counter, if given full effect, to the

water right laws of Colorado covering priorities of appropriations, and it is said in Paragraph IX of said Colorado decree that it was not the purpose of the suit between Wyoming and Colorado to withdraw local appropriations and water claims from the operation of the laws of the State, and the Court thereupon went on to adjudicate the respective priorities of the several claimants upon the theory that no specific allotments were made by this Court, but upon the contrary, there was a mass allocation of 39,750 acre feet to Colorado claimants.

WHEREFORE, the consideration of this Court is earnestly invited to the difficulties attending the administration of the waters of the Laramie River; the conflicting views obtaining among the water claimants as to whether there was under the decree and opinion of this Court individual allotments of water to such claimants or a mass allocation of water to the State of Colorado for administration under its laws; the decree of the District Court of Colorado to such effect, the rejection by this Court of the doctrine of return flow notwithstanding the allegation in Wyoming's original bill (page 7, Volume I, Transcript of Record) that approximately seventy-five per cent of the Meadowland appropriations return to the Laramie River; and the findings of fact by the Colorado District Court that ninety per cent of said Meadowland diversions were in truth returned to the river for Wyoming's use; the wide conflict of interest as respects the individual appropriators according to the interpretation of the decree of this Court, such as, if 4,250 acre feet headgate measurement is to be literally applied, the Meadowlands will be to all intents and purposes destroyed. If greater diversions for the Meadowlands are allowed, as provided in the decree of the Colorado District Court, and the return flow doctrine is still to be rejected by this Court, then no other claimant provided for in the decrees of this Court will ever receive to exceed one-half of the amounts awarded them.

The clarification by this Honorable Court of its decree will solve all controversies attending this cause and such is earnestly and respectfully prayed.

And this Defendant respectfully submits the violations of the decree of this Court respecting said Meadowlands were technical, as distinguished from prejudicial, and the violation of said decree as respects the limitation thereof was had and done as hereinbefore alleged under said Colorado Court's decree and with the full knowledge and consent of Wyoming.

There are hereto attached and marked as Exhibits "B," "C," "D," "E," and "F," the affidavits respectively of Robert G. Smith, Fancher-Sarchet, Albert P. Fischer, Lawrence R. Temple, and M. C. Hinderlider, State Engineer of Colorado, respecting said Meadowland diversions, and the consent of Wyoming thereto.

WHEREFORE, it is respectfully prayed that the prayer of the Petition be in all things denied; that this Defendant be discharged from the Rule hereinbefore herein issued, and for such other relief as the facts warrant.

BYRON G. ROGERS,
Attorney General,
HENRY E. LUTZ,
Deputy Attorney General,
SHRADER P. HOWELL,
Assistant Attorney General,
Attorneys for the Defendant State of Colorado.

ROBERT G. SMITH,
LAWRENCE R. TEMPLE,
ALBERT P. FISCHER,
Of Counsel.

STATE OF COLORADO, }
CITY AND COUNTY OF DENVER } ss.

BYRON G. ROGERS, of lawful age, first duly sworn on his oath deposes and says that he is the duly elected, qualified and acting Attorney General of the State of Colorado; that he has read the above and foregoing Return to the Rule to Show Cause, knows the contents thereof, and that the same is true according to the best of his knowledge, information and belief.

BYRON G. ROGERS.

Subscribed and sworn to before me this 18th day of March, A. D. 1940.

My commission expires July 6, 1942.

ANN G. LANDY,
Notary Public.

(Seal)

EXHIBIT "A."

STATE OF COLORADO, }
County of Larimer } ss.

IN THE DISTRICT COURT.
No. 7897.

ADELRICK BENZIGER,

Plaintiff,

vs.

THE WATER SUPPLY & STORAGE COMPANY, a corporation, THE TUNNEL WATER COMPANY, a corporation, THE DIVIDE CANAL & RESERVOIR COMPANY, a corporation, M. C. HINDERLIDER as State Engineer of the State of Colorado, and R. A. MOSIER, as Commissioner of Water District No. 48,

Defendants.

DECLARATORY JUDGMENT AND DECREE.

This cause having come on for trial to the Court on Tuesday, the 31st day of January, 1939, the plaintiff appearing in person and by his attorneys, Fancher Sarchet and J. W. Vaughn, the defendants The Water Supply & Storage Company and The Tunnel Water Company appearing by their attorneys, L. R. Temple and Albert P. Fischer, the defendant The Divide Canal & Reservoir Company appearing by Robert G. Smith, its attorney, the defendants M. C. Hinderlider as State Engineer of the State of Colorado and R. A. Mosier as Commissioner of Water District No. 48 appearing in person and by their attorneys, Byron G. Rogers, Attorney General of the State of Colorado, and Shrader P. Howell, Assistant Attorney General of the State of Colorado; and the evidence adduced by the parties hereto having been concluded on the first day of

February, 1939, and the Court having heard said evidence and having read and examined the exhibits introduced by said parties and having heard the arguments of counsel, which were concluded on the 2nd day of February, 1939, and the cause having been continued to this 21st day of February, 1939, for making and entry of decree, and the Court being now sufficiently advised in the premises, DOTH FIND:

I.

That the plaintiff and the defendant corporations are each appropriators of water for the purpose of irrigation out of the Laramie River and its tributaries, said river being an interstate stream which has its source in mountainous country in Larimer County, Colorado, and flows thence in a northerly direction into the State of Wyoming. That all of the territory drained by the said Laramie River and its tributaries in Colorado comprises Water District No. 48 of the State of Colorado, and appropriations of water for irrigation purposes from said river and its tributaries in Colorado and involved in this cause have heretofore been duly adjudicated and decreed by this Court in proceedings under the applicable statutes of the State of Colorado, for the adjudication of priorities to the use of water for irrigation, and that the plaintiff and the defendant corporations are the owners respectively of priorities under said decrees of dates and rate of flow as follows:

Plaintiff, Adelrick Benziger, owner of two ditch priorities; Martin No. 1 priority of date April 20, 1883, for 15.5 second feet; and Martin No. 2 Priority of date April 30, 1887, for 14.5 second feet, for irrigation of native hay meadowland owned by him in the Laramie River valley and adjacent to the Laramie River;

Defendant The Water Supply & Storage Company, owner of Skyline Ditch priority of date August 7, 1891, for 400 second feet, for transmountain diversion to lands outside of the Laramie River watershed;

Defendant The Divide Canal & Reservoir Company, owner of Wilson Supply ditch, priority of date June 15, 1899, for 288 second feet, for transmountain diversion to land outside of the Laramie River watershed; and

Defendant The Tunnel Water Company, owner of the Laramie Poudre Tunnel, priority of date August 25, 1902, for approximately 250 second feet, for transmountain diversion to lands outside the Laramie River watershed.

II.

That plaintiff's said two ditch appropriations are among and included in those "certain meadowland appropriations" referred to and involved in the original actions hereinafter mentioned brought by the State of Wyoming against the State of Colorado, in the Supreme Court of the United States. And the said defendants' said several appropriations are the same appropriations referred to and involved in said original actions, and are therein referred to as, "the Skyline ditch appropriations," "the Deadman Creek appropriations," and "the Laramie-Poudre Tunnel appfopriation," respectively.

III.

That there are other appropriators of water out of said Laramie River and its tributaries in said Water District No. 48 for irrigation of native hay meadowland owned by them in the Laramie River Valley in Colorado, and adjacent to said river or its tributaries; and of said other appropriators all those hereinafter in this paragraph mentioned own appropriations having priorities decreed in said Water District No. 48 of an earlier date than the said Skyline appropriation and the said appropriations of the other defendants; and all of said meadowland appropriations are among and included in those "certain meadowland appropriations" referred to and involved in said original actions in the Supreme Court of the United States; That in the foregoing respects said meadowland appropriators are

all similarly situated to plaintiff, and plaintiff herein has brought and prosecuted this cause in his own behalf and in behalf of said other meadowland appropriators thus similarly situated. That those appropriators in whose behalf this cause is prosecuted (including plaintiff) are, and own the appropriations listed, as follows:

Name of Present Owner	Name of Ditch	Date of Appropriation	Number of Second Feet
Martin Hohnholz	Mansfield #2	6- 1-80	19.84
Clarence Oviatt	Warren	3-25-81	6.67
Emma Hohnholz	Hance	3-21-81	19.44
Clarence Oviatt	Stuck Creek	4- 1-81	16.12
G. R. Holcombe	Jim Creek	5-10-81	9
Clarence Oviatt	Bliler & Boswell (only as to that portion used in Colorado)	4- 1-82	7.04
Emma Hohnholz	Mansfield	4-20-82	11.61
R. M. Leake, Jr.	Yelton (a joint interest)	7- 1-82	30.14
Adelrick Benziger	Martin #1	4-20-83	15.5
Ralph Tatham and R. M. Leake, Jr.	La Garde	6-10-83	10.33
H. F. Piper	Ward #1	6-15-83	4.25
H. F. Piper	Ward #2	7- 1-83	9.48
R. M. Leake, Jr.	Jimmy Creek	6- 1-84	5.52
H. F. Piper	Trollope	6-15-84	6.89
Adelrick Benziger	Martin #2	4-30-87	14.50
Martin Hohnholz	Grace Creek	4- 1-88	3.07
Louis E. Sholine	Brown Ditch	5-31-90	10.
Kay H. Olson	Lamb	6- 1-90	3.88
R. M. Leake, Jr.	Jimmy Creek Ditch	5- 1-91	

IV.

That all of the irrigated lands of the said meadowland appropriators, including plaintiff, are lands in cattle ranches and are of altitude of approximately 8000 feet

above sea level, and the only crop for which they are adapted is native hay; That for the proper irrigation of said lands it is necessary to keep the same wet by continuously flooding said lands for a period of approximately sixty days during each growing season, commencing about the 25th day of May of each year; that said meadowlands are situated along and adjacent to the main Laramie River or one or more of its tributaries and slope toward said river or tributary. And as heretofore applied on and to the irrigation of said meadowlands, of the waters diverted from the flow of said river system at the headgates of the several ditches under said appropriations, approximately 90% thereof has returned to the said river through percolation and surface return flow, and only the remaining approximate 10% has been actually consumed by the meadow growth and evaporation; and all of such return flow and percolation has been available to ditches having their headgates further downstream, including all appropriators from said river in the State of Wyoming. That the total water diverted during each year under the said meadowland appropriations herein before listed (and exclusive of other meadowland appropriation not herein listed, but which are included in those "certain meadowland appropriations" mentioned in the said Supreme Court actions), at the headgates of said listed ditches has been approximately 25,600 acre feet, of which approximately 90% has returned to the stream flow for the benefit of diversions lower downstream, including the State of Wyoming. And that until the situation now confronting the water users and appropriators in said Water District No. 48 arose by reason of the limitations placed upon Colorado and her appropriators of water, under the findings, opinions, and decrees of the Supreme Court of the United States hereinafter mentioned, the natural flow of said Laramie River and its tributaries was and has been sufficient to supply all decreed priorities in said Water District No. 48.

V.

That heretofore those certain original suits involving the appropriations and use of water from said Laramie River, an interstate stream as aforesaid, were brought and prosecuted by the State of Wyoming against the State of Colorado before the Supreme Court of the United States, and the findings, opinions, and decrees of said Supreme Court are officially reported as follows, to-wit:

No. 3 original, October term, 1921, entitled The State of Wyoming v. The State of Colorado, decided June 5, 1922, officially reported in 259 U. S. at page 419 and decree reported in 259 U. S. at page 496. (Also reported in 42 S. Ct. 552 and 594; 66 L. Ed. 999.)

On October 9, 1922, a modified decree was entered in the foregoing cause which is officially reported in 260 U. S. at page 1. (Also reported in 43 S. Ct. 2; 66 L. Ed. 1026.)

No. 15 original, October Term, 1931, entitled The State of Wyoming v. The State of Colorado, decided upon motion to dismiss May 31, 1932, officially reported in 286 U. S. at page 494. (Also reported in 52 S. Ct. 621; 76 L. Ed. 1245.)

No. 10 original, which is the same cause as the foregoing No. 15 original, October Term, 1935, entitled The State of Wyoming v. The State of Colorado, officially reported in 298 U. S. at page 573. (Also reported in 56 S. Ct. 912.) (And decree therein officially reported in ..... U. S. at page ..... Exhibit "E" herein.)

VI.

That in and by said suits the Supreme Court of the United States found, determined, and decreed, as between the two States and their respective appropriators of water from the Laramie River and all its tributaries, excluding Sand Creek, that by reason of prior appropriations by Colorado appropriators, in limits as to quantity of water

and as to dates of appropriation fixed by said Court as between the two States, that there was thereby confirmed and established:

The right of the State of Colorado, or of any one recognized by her as duly entitled thereto, to divert and take within that State a total of 39,750 acre feet in each year (and no more) in virtue of appropriations prior to Wyoming appropriations and in amounts as follows:

(1) 18,000 acre feet of water per annum from the Laramie River and its tributaries in virtue of the Skyline Ditch appropriations;

(2) 4,250 acre feet of water per annum from such stream and its tributaries in virtue of certain meadowland appropriations;

(3) 2,000 acre feet from the headwaters of Deadman Creek, a tributary of the Laramie River, through the Wilson supply ditch;

(4) 15,500 acre feet of water per annum from the Laramie River and its tributaries, in virtue of the Laramie-Poudre tunnel appropriation;

and all remaining waters of said river and its tributaries was thereby confirmed and established in the State of Wyoming and her water claimants. And by further provisions in said decrees the defendant therein, the State of Colorado, was specifically enjoined from diverting or taking any waters in excess of the confirmed rights to 15,500 acre feet and 4,250 acre feet in virtue of Laramie-Poudre Tunnel appropriation and in virtue of the meadowland appropriations, respectively, there being no showing in said suits of any exigency requiring specific injunctions against the State of Colorado respecting the other recognized and accredited diversions by the other defendant corporations herein.

VII.

That from and by reason of said suits, and the said opinions, decrees, and injunctions rendered therein by the Supreme Court of the United States, uncertainties exist and controversies have arisen between the defendants and the plaintiff and the other appropriators in whose behalf this action is brought and prosecuted: The defendant corporations and the defendant water officials contending and construing said Supreme Court decisions and decrees as modifying the adjudication decrees of this Court in the State of Colorado as pertain to said Water District No. 48, and in effect nullifying said state decrees by adjudicating amounts and priority of right as between the defendant corporations and the meadowland appropriators, irrespective of the adjudications in this Court and the priorities as decreed in this Court; and the plaintiff, for himself and others similarly situated, contending and construing said Supreme Court decisions and decrees as limiting Colorado's use of said river waters in a total allocation as between the states, and contending that the meadowland appropriations should be first satisfied according to their priorities to the extent of such total allocation, whereby only the remaining water accredited to Colorado would be available to the defendant corporations under their junior appropriations: Wherefore, to remove such uncertainty and terminate such controversy, this Declaratory Judgment and Decree is proper and necessary to declare the status and rights of the parties hereto, and to direct a proper administration of the diversion of waters in Water District No. 48 for irrigation.

VIII.

That said defendant corporations assert the right to divert and take and unless enjoined and restrained will, if water is available, divert and take each year from the Laramie River and its tributaries a total of 35,500 acre feet of water; that the defendant The Water Supply &

Sforage Company asserts the right to divert and take and will divert and take, unless enjoined from so doing, each year 18,000 acre-feet of water; that the defendant corporation The Tunnel Water Company asserts the right to divert and take, and will divert and take, unless enjoined from so doing, each year 15,500 acre feet of water; that the defendant The Divide Canal & Reservoir Company asserts the right to divert and take, and will divert and take, unless enjoined from so doing, each year 2,000 acre feet of watef; that the defendant M. C. Hinderlider, as State Engineer of the State of Colorado, proposes and asserts that he will, beginning in April of the present year, unless enjoined and restrained from so doing, administer the distribution of the water of the said Laramie River and its tributaries by permitting each defendant corporation to take each year the several amounts above stated, making said total of 35,500 acre feet, without regard to priorities as determined by Colorado decree; and that he will distribute only the remaining 4,250 acre feet of the total accord en mass allocation to the ranchers in said Water District, measured at the headgates; that the situation thus disclosed renders the plaintiff and said other persons similarly situated insecure in their rights, will lead to a multiplicity of suits, and there is no adequate remedy at law in the premises, and this is a proper case for injunction.

The Court Doth Further Find and Declare:

IX.

That said original suits in the Supreme Court of the United States were of nature between the two states, and the decisions therein were intended to and did, determine only the relative rights of the two states to divert and take the waters of the Laramie River and its tributaries; and the question of priority in time and right of the appropriations were therein dealt with and resolved and decreed only as between the two states; and it was not the purpose of said suits or of the opinions and decrees entered therein

to withdraw said appropriations and water claims from the operation of the local laws of Colorado, or to restrict their utilization in any way not affecting the rights of the State of Wyoming and her water claimants. That the fixing therein of the meadowland appropriations and enjoining any diversion and taking in excess thereof in virtue of such appropriations was and is, and was intended to be, only as between the two states, and not an adjudication or re-adjudication of the relative rights of the owners of the decreed appropriations in said Water District No. 48 in the State of Colorado; and that the relative rights of all of the owners of all of said decreed appropriations in the State of Colorado as to priority in time and right—and amount, so long as the aggregate of water diverted does not exceed the total of 39,750 acre feet accredited to Colorado appropriations, exclusive of diversions from Sand Creek or its tributaries—are subject to the constitution and laws of the State of Colorado and to the decrees heretofore entered in this Court in adjudication proceedings for said Water District No. 48.

X.

That the plaintiff and other meadowland appropriators and the defendant appropriators are entitled to divert and take water for irrigation from the Laramie River and its tributaries, through properly installed headgates in their respective ditches, according to their respective priorities in time and right as fixed by the adjudication decrees of this Court for Water District No. 48, until the total so diverted and taken by all such appropriators in each year shall equal in the aggregate the amount of 39,750 acre feet from the Laramie River and its tributaries, excluding Sand Creek; and the water officials have the duty so to administer said water. Provided, in addition to the division and measurement of said waters as heretofore by cubic feet of flow per second of time, the total diversion at the headgates in acre feet is to be determined and recorded to the end that the total amount allocated to Colorado may not

be exceeded. And provided further, since by the limitations now placed upon the State of Colorado no credit is given for return waters from diversions made by the meadowland appropriators in said Water District and all such return waters are lost to Colorado's allocation, the permitting of any unnecessary return to the stream of diverted and measured water shall be deemed waste and, as such, prohibited by the adjudication decrees of this Court.

It is Therefore Ordered and Decreed:

That in the administration of the distribution of water of the Laramie River and its tributaries in Water District No. 48 in the State of Colorado, the parties hereto shall proceed in accordance with the foregoing findings, declarations, and directions and in conformity with the Constitution and laws of the State of Colorado, under the decrees of this Court pertaining to said Water District No. 48 and upon the recognized practice of administration applied to all streams in Colorado, whereby each ditch be permitted to divert each day under its decree in accordance with date of priority. When 39,750 acre feet of water have been diverted by all the decrees exclusive of those from Sand Creek and its tributaries, all headgates are to be closed for the balance of the season.

It is further ordered, adjudged, and decreed that in the administration of the distribution of water under the decreed priorities of said Water District No. 48, all of said opinions and decrees of the Supreme Court of the United States shall be considered together and as a total limitation and mass allocation to Colorado of 39,750 acre feet annually from the waters of said river and its tributaries, exclusive of Sand Creek, and that the amount taken and distributed any year shall be measured and shall not exceed such total of 39,750 acre feet measured at the headgates, so long as said limitation continues to exist.

It is further ordered, adjudged, and decreed that the plaintiff appropriators and said defendant corporations,

and each of them is enjoined and restrained from taking water from said river and its tributaries excepting as herein limited and directed; and that the defendant M. C. Hinderlider as State Engineer of the State of Colorado and all of his subordinate officers, including the defendant R. A. Mosier as Water Commissioner of said District No. 48; be and that each of them is hereby enjoined and restrained from administering the distribution of water in said Water District No. 48 otherwise than as herein directed and decreed.

It is further ordered, adjudged, and decreed that the defendant corporations hefein pay the costs herein taxed and to be taxed.

Done in open court this 21st day of February, 1939, as of date February 2, 1939.

By the Court:

CLAUDE C. COFFIN, Judge.

EXHIBIT "B."

AFFIDAVIT.

STATE OF COLORADO, }
COUNTY OF WELD } ss.

ROBERT G. SMITH, being first duly sworn, upon oath deposes and says:

That he is Attorney for The Divide Canal and Reservoir Company, which is the owner of the Wilson Supply Ditch, and on July 1, 1939, was present at a conference between the State Engineer of the State of Wyoming, the Attorney General of the State of Wyoming, the Governor of the State of Colorado, the State Engineer of the State of Colorado, the Attorney General of the State of Colorado, and representatives of water users from the Laramie River

in Colorado, in relation to a controversy between said respective states over the waters of said Laramie River;

That during said conference the State Engineer of the State of Colorado, particularly addressing the State Engineer of the State of Wyoming, stated in effect that the State of Wyoming could not be injured materially by any amount of diversion from the Laramie River by the meadow land appropriators because 90% of the water diverted returned to the stream before it reached the state line; that the State Engineer of the State of Wyoming replied, in effect, that he did not concede that 90% of said water so diverted returned to the stream and stated that in his opinion "not more than 80 to 85%" returned;

That during said conference it was conceded by all of said persons that in excess of 75% of water diverted from the Laramie River by said meadow land appropriators did, in fact, return to said river before it reached the state line; that said Wyoming officials stated, in effect, that they did not care whether the headgates of the meadow land appropriators were closed or not, because diversions by said meadow land appropriators in the State of Colorado did not, in fact, withhold more than a small part of the water diverted by said meadow land appropriators from the State of Wyoming;

That he is informed and believes, and on such information and belief states that said Wilson Supply Ditch was not re-opened nor was any water diverted therethrough after notice to close same was given by the State Engineer of the State of Colorado on the 19th day of June, A. D. 1939.

Further affiant saith not.

ROBERT G. SMITH.

ROBERT G. SMITH.

STATE OF COLORADO, }
County of Weld } ss.

The above and foregoing Affidavit was subscribed and sworn to before me this 16th day of March, A. D. 1940, by ROBERT G. SMITH.

My Commission Expires Oct. 7, 1941.

Tracy C. Cameron.
(Seal) Notary Public.

EXHIBIT "C."

STATE OF COLORADO, }
County of Larimer } ss.

FANCHER SARCHET, being first duly sworn upon his oath, deposes and says:

That he was present at a meeting on July 1, 1939, in the office of Ralph L. Carr, Governor of the State of Colorado, whereat there were present Ralph L. Carr, Governor of the State of Colorado, M. C. Hinderlider, State Engineer, J. E. Whitten, Division Engineer, Byron G. Rogers, Attorney General, Shrader P. Howell, Deputy Attorney General, all officers of the State of Colorado, and Fancher Sarchet Robert G. Smith, Lawrence R. Temple, Albert P. Fischer, all of the State of Colorado, and L. C. Bishop, State Engineer, and Ewing T. Kerr, Attorney General of the State of Wyoming and others. That it was stated by Ewing T. Kerr, Attorney General of the State of Wyoming and acquiesced in by L. C. Bishop, State Engineer of the State of Wyoming, that the State of Wyoming did not care and was not concerned in the amount of water diverted from the Laramie River in Colorado by the meadowland users, but only desired to reduce the use of said water from said river by the transmountain diversion interests.

Fancher Sarchet.

Subscribed and sworn to before me this 16th day of March, A. D. 1940.

My commission expires: Sept. 15, 1940.

FRANK W. MOORE,
Notary Public.

(Seal)

EXHIBIT "D."

STATE OF COLORADO, }
} ss.
COUNTY OF LARIMER }

ALBERT P. FISHCER, being first duly sworn upon his oath, deposes and says:

That he was present at a meeting on July 1, 1939, in the office of Ralph L. Carr, Governor of the State of Colorado, whereat there were present Ralph L. Carr, Governor of the State of Colorado, M. C. Hinderlider, State Engineer, J. E. Whitten, Division Engineer, Byron G. Rogers, Attorney General, Shrader P. Howell, Deputy Attorney General, all officers of the State of Colorado, and Fancher Sarchet, Robert G. Smith, Lawrence R. Temple, Albert P. Fisher, all of the State of Colorado, and L. C. Bishop, State Engineer, and Ewing T. Kerr, Attorney General of the State of Wyoming and others. That it was stated by Ewing T. Kerr, Attorney General of the State of Wyoming and acquiesced in by L. C. Bishop, State Engineer of the State of Wyoming, that the State of Wyoming did not care and was not concerned in the amount of water diverted from the Laramie River in Colorado by the meadowland users, but only desired to reduce the use of said water from said river by the transmountain diversion interests.

ALBERT P. FISCHER.

Subscribed and sworn to before me this 18th day of March, A. D. 1940.

My commission expires: Sept. 15, 1940.

FRANK W. MOORE,
Notary Public.

(Seal)

EXHIBIT "E."

STATE OF COLORADO, }
County of Larimer } ss.

LAWRENCE R. TEMPLE, being first duly sworn upon his oath, deposes and says:

That he was present at a meeting on July 1, 1939, in the office of Ralph L. Carr, Governor of the State of Colorado, whereat there were present Ralph L. Carr, Governor of the State of Colorado, M. C. Hinderlider, State Engineer, J. E. Whitten, Division Engineer, Byron G. Rogers, Attorney General, Shrader P. Howell, Deputy Attorney General, all officers of the State of Colorado, and Fancher Sarchet, Robert G. Smith, Lawrence R. Temple, Albert P. Fischer, all of the State of Colorado, and L. C. Bishop, State Engineer, and Ewing T. Kerr, Attorney General of the State of Wyoming and others. That it was stated by Ewing T. Kerr, Attorney General of the State of Wyoming and acquiesced in by L. C. Bishop, State Engineer of the State of Wyoming, that the State of Wyoming did not care and was not concerned in the amount of water diverted from the Laramie River in Colorado by the meadowland users, but only desired to reduce the use of said water from said river by the transmountain diversion interests.

Lawrence R. Temple.

Subscribed and sworn to before me this 18th day of March, A. D. 1940.

My commission expires: Sept. 15, 1940.

Frank W. Moore,
Notary Public.

(Seal)

EXHIBIT "F."

AFFIDAVIT OF M. C. HINDERLIDER.

STATE OF COLORADO, }
CITY AND COUNTY OF DENVER } ss.

M. C. HINDERLIDER, of lawful age, being first duly sworn upon his oath deposes and says that he is now and for many years last past has been the duly appointed, qualified and acting State Engineer of the State of Colorado; that on to-wit Saturday, July 1, A. D. 1939, this affiant attended a protracted conference respecting the administration of the waters of the Laramie River within the purview of the decree of the Supreme Court of the United States and the decree of the District Court of Colorado respecting said waters; that among others there were present at said conference Honorable Ewing T. Kerr, Attorney General of Wyoming, and Mr. L. C. Bishop, State Engineer of Wyoming, Governor Carr of Colorado, Attorney General Rogers of Colorado, and Attorneys Temple, Smith, Sarchet, and others, representing certain of the water users involved. That the only protest made by Wyoming officials on said occasion, was respecting the so-called Trans-Mountain Diversions, notwithstanding the fact that at said time said Trans-Mountain Diversions had not nearly equaled the allotments indicated by the decree of the Supreme Court of the United States; that both Messrs. Kerr and Bishop, representing Wyoming, expressly stated, not only to this affiant but to the conference generally, that they had no objection so ever to continued diversions as respects the Meadowland appropriations—those involved in the decree of June 1, A. D. 1936, in the Supreme Court of the United States; that at the time of said conference vastly more than 4250 acre feet had been diverted by said Meadowland appropriators, or approximately 20,000 acre feet, but notwithstanding which it was repeatedly stated by both Messrs. Kerr and

Bishop that further diversions by said Meadowland appropriators were not and would not be objected to; that State Engineer Bishop of the State of Wyoming stated that in his opinion at least 75% of said Meadowland diversions were returned to the Laramie River and hence became subject to Wyoming's use. That as hereinbefore stated the only objections voiced by either Attorney General Kerr or State Engineer Bishop of Wyoming related to the Trans-Mountain Diversions. Further affiant sayeth not.

M. C. HINDERLIDER.

Subscribed and sworn to before me this 18th day of March, A. D. 1940.

My commission expires July 6, 1942.

ANN G. LANDY,
Notary Public.

(Seal)